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By Russell Leibson

Karl von Clausewitz wrote that war is a continuation of politics "by other means." In today's world of hardball litigation, some would say that law is a continuation of war "by other means." The dictionary defines "tactics," a word derived from the ancient Greek "taktika" (to arrange in battle formation), as the science and art of disposing and maneuvering forces in combat, and the art or skill of employing available means to accomplish an end. This issue looks at "Tactics," including articles on the litigation privilege, ways to lose your appeal at trial, witness preparation, jury selection, and a host of other issues.

Richard L. Stone and *Daniel B. Mestaz* look at the uses and abuses of the litigation privilege. They conclude that expansion of the privilege is fraught with traps for the unwary, reminding us of the old adage be careful what you ask for; you just might get it.

Gregory R. Ellis and *Gerald Clausen* give trial lawyers their "top eight" list of ways to lose your appeal at trial. They point out that the failure to make a proper record before or during trial may preclude the ability to successfully raise a meritorious argument on appeal.

Daniel M. Petrocelli and *Brenda S. Barton* offer a valuable primer on effective witness preparation. As they quite rightly caution, the testimony of an unprepared witness is the stuff of which successful summary judgment motions are made, privileges are waived, and key trial testimony is impeached.

Mark E. Canepa examines the procedural requirements and pitfalls in expert witness exchanges. He opines that the California Supreme Court's recent decision in *Bonds v. Roy* has restored some much needed fair notice to the process, vesting trial judges with the power to deter parties from gamesmanship.

Gina M. Austin provides some valuable tips on jury selection. In her view, using pre-voir dire questionnaires, carefully planning the types of questions to ask and criteria for evaluating prospective jurors' answers, and staying attuned to jurors' non-verbal communication are crucial in selecting a favorable jury.

David G. Brown and *Joanne M. Krakora* analyze the use of guidelines and regulations in establishing care and conduct in medical malpractice and products liability litigation. They conclude that while guidelines are useful as evidence of the applicable standard of care, there are difficulties involved in using them to establish negligence per se.

Jeffrey Calkins looks at shifting judicial attitudes toward the peculiar risk of harm doctrine. In his view, recent California Supreme Court decisions reflect that the pendulum of liability has now swung toward a "middle ground," leaving some important questions still unresolved.

The Hon. Eugene M. Premo's Judicial Opinion offers his perspective on the art of appellate oral argument. Although maligned in some quarters as a luxury we can no longer afford in the face of soaring appellate caseloads, he points out that oral advocacy gives counsel the valuable opportunity to assist the justices as they wrestle with close questions.

— Looking Ahead —

Our next issue looks at "Arbitration," a subject that has generated considerable controversy among litigants, practitioners and the courts. With several important cases accepted for review by the California Supreme Court and numerous legislative reforms spurred by consumer groups, the landscape of this increasingly

prevalent form of alternative dispute resolution may change drastically over the coming years.

Russell Leibson, Editor-in-Chief of California Litigation, practices at his own firm in San Francisco.

California Litigation is pleased to review original articles submitted for publication.
(Articles should be 8-10 double-spaced pages, or about 2,000 words.)

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